

Memorandum

MIAMI-DADE
COUNTY

Date: October 10, 2006

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

Agenda Item No. 8(P)(1)(N)

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Execution of a Lease Agreement in the Amount of \$2,550.00 Between Miami-Dade County and Florida East Coast Railway Co., LLC (FEC) for the Continued Use of a Pedestrian Safety Walkway Along the East Side of NE Second Avenue, Between NE 6 Street and NE 7 Street

RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the execution of a Lease Agreement in the amount of \$2,550.00 between Miami-Dade County and Florida East Coast Railway Co., LLC (FEC) for the continued use of a pedestrian safety walkway along the east side of NE Second Avenue, between NE 6 Street and NE 7 Street, for a period of three (3) years commencing retroactively on September 26, 2006. The pedestrian safety walkway provides protection to the general public walking along NE Second Avenue.

BACKGROUND

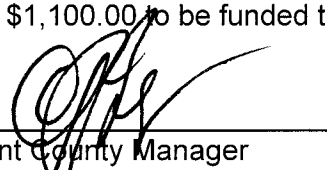
In September 1982, a 10' feet wide and 75' feet long concrete sidewalk was constructed by the City of Miami along the east side of NE Second Avenue. The sidewalk was constructed to provide continuity along an area where sidewalk was already in existence to both the north and south of the FEC Railway property, located between NE 6 Street and NE 7 Street.

The City of Miami entered into a Lease Agreement with FEC Railway Company which specified an annual fee to be paid by the City for leasing the area where the sidewalk was constructed. The City's Lease Agreement was terminated in September 1986, pursuant to County Commission Resolution No. R-809-82, adopted June 15, 1982, establishing NE Second Avenue, between NE 2 Street and NE 54 Street, as a County maintained roadway. The Lease Agreement was reinstated with Miami-Dade County as the new lessee, approved by Resolution No. R-218-88. Subsequently Resolutions Nos. R-364-99, adopted April 13, 1999, and R-73-06 adopted January 24, 2006, increased the annual rental fee to the present amount of \$450.00.

The new Lease Agreement was received on June 15, 2006 by the Public Works Department. The Lease is to be executed with FEC for a period of three (3) years with an escalating rental charge for year one, commencing retroactively on September 26, 2006, in the amount of \$625.00; for year two, commencing September 26, 2007, in the amount of \$825.00; and for year three, commencing September 26, 2008, in the amount of \$1,100.00. The agreement reflects an increase of the rental fee for the continued use of the leased property. The increase is consistent with rental fees on surrounding properties.

FISCAL IMPACT

The fiscal impact for year 2006-2007 is \$625.00; for year 2007-2008 is \$825.00; and for year 2008-2009 is \$1,100.00 to be funded through Secondary Gas Tax.


Assistant County Manager


Date



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: October 10, 2006

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 8(P)(1)(N)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

✓

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(P)(1)(N)
10-10-06

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT IN THE AMOUNT OF \$2,550.00 BETWEEN MIAMI-DADE COUNTY AND FLORIDA EAST COAST RAILWAY CO., LLC (FEC) FOR THE CONTINUED USE OF A PEDESTRIAN SAFETY WALKWAY ALONG THE EAST SIDE OF NE SECOND AVENUE, BETWEEN N.E. 6 STREET AND N.E. 7 STREET

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves a Lease Agreement between Miami-Dade County and Florida East Coast Railway Co., LLC (FEC) for the lease of a strip of land on FEC property along the east side of NE Second Avenue, between NE 6 Street and NE 7 Street, for the continued use of a pedestrian safety walkway for a period of three (3) years with an escalating rental charge of year one, commencing retroactively on September 26, 2006, in the amount of \$625.00; for year two, commencing September 26, 2007, in the amount of \$825.00; and for year three, commencing September 26, 2008, in the amount of \$1,100.00, in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for an on behalf of Miami-Dade County and to exercise all provisions contained therein.

The foregoing resolution was offered by Commissioner ,
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Jose "Pepe" Diaz
Audrey M. Edmonson	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrian D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of October, 2006. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. 12/31

Hugo Benitez

REAL ESTATE LEASE

This Real Estate Lease ("Lease") is made as of this 26th day of September, 2006, by and between Florida East Coast Railway, L.L.C.; a Florida limited liability company having an address of One Malaga Street, St. Augustine, Florida 32084 ("Railway") and **MIAMI DADE COUNTY**, a political subdivision of the State of Florida, whose business address is Public Works Department, Suite 1610, 111 N. W. 1st Street, Miami, Florida 33128-1970, ("Lessee").

1. Leased Premises: Railway hereby leases to Lessee and Lessee hereby leases from Railway under the terms and conditions set forth in this Lease, the following described property:

A rectangular-shaped parcel of land on Railway's Right-of-Way for its P & O Dock Spur tracks in Miami, Dade County, Florida, said parcel measuring 10 feet easterly and westerly by 75 feet northerly and southerly; with westerly and southerly lines of said parcel commencing at a point located on Railway's southerly Right-of-Way line and the easterly line of N.E. Second Avenue, Miami, Florida, with westerly line of said parcel continuing northerly and coinciding with said easterly line of said N.E. Second Avenue for a distance of 75 feet; with southerly line of said parcel continuing easterly and coinciding with Railway's said southerly Right-of-Way line for a distance of 10 feet; easterly line of said parcel being parallel with and 10 feet distant easterly from said westerly line; northerly line of said parcel being parallel with and 75 feet distant northerly from said southerly line.

All as shown on Railway's Drawing No. A-897, dated October 27, 1986, attached hereto and made a part hereof (collectively with any buildings, facilities and improvements currently or in the future located on the described property, the "Leased Premises").

7258

County: Dade

Contract Type: 41

File: 366-22-19

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2. Term

The initial term of this Lease shall be from September 26, 2006 through September 25, 2007 (the "Initial Term"); provided, however, that Lessee shall have no right to possession of the Leased Premises until the Security Deposit has been delivered to Railway (the Security Deposit shall not be deemed delivered to Railway if it is in the form of a check until that check has cleared the bank and funds have been credited to Railway's account) and Lessee has provided Railway with a certificate of insurance evidencing the insurance coverages Lessee is obligated to maintain pursuant to this Lease.

If Lessee is not in default under this Lease, Lessee shall have the option to renew this Lease after the expiration of the Initial Term and any renewals thereof, for an additional 12-month period (the "Renewal Term") by furnishing Railway advance written notice of its intent to renew. Unless Railway indicates otherwise in writing, the covenants and conditions of the Lease in force during the Initial Term, as the same may be modified from time to time, shall continue to be in effect during all Renewal Terms, except that the rent for the Renewal Term shall be increased to equal the greater of the (i) the rental rate then prevalent for similar properties or (ii) the rental rate for the term immediately preceding the Renewal Term increased by five percent (5%). Lessee shall have no expectation of renewal and this Lease may be terminated in accordance with its terms regardless of the length of time Lessee has occupied the Leased Premises, or the construction by Lessee of any buildings, structures, works, paving, barricades or the placement of Lessee's personal property on the Leased Premises.

3. Rent

(a) Rent

During the Initial Term of this Lease, the Lessee shall pay to the Railway an annual rental in advance on or before the 1st day of each term year, plus all sales or use taxes levied by any governmental body for the use or occupancy of the Leased Premises ("Sales and Use Tax"), as set forth below:

<u>Effective Date</u>	<u>Base Rental</u>
September 26, 2006	\$ 625.00
September 26, 2007	\$ 825.00
September 26, 2008	\$1,100.00

Rent shall be paid to Railway's office at One Malaga Street, St. Augustine, Florida 32084 or as otherwise indicated on invoices. The requirement to pay rent and other payments shall survive expiration or termination of this Lease until all Lessee's Property (as defined in paragraph 14 hereof) is removed from the Leased Premises in accordance with this Lease and the requirements of paragraph 14 of this Lease are met.

(b) Additional Charges

If Lessee's presence or activities on the Lease Premises causes Railway to incur costs for cleaning, trash removal, inspections, or like expenses, Lessee agrees to pay such cost to Railway on demand, the amount of such costs incurred by Railway. Notwithstanding the foregoing, Lessee will pay on

demand the greater of the actual inspection costs or \$350.00 for any inspection conducted by Railway or its agents on the Leased Premises the results of which show, in Railway's sole determination, a violation of this Lease of any federal, state or municipal law or regulation. Lessee shall also pay on demand the greater of the actual inspection costs or \$350.00 for any follow-up inspections related to the violation.

(c) Late Charge

If any rent or other payment due under this Lease is not received by Railway within ten (10) days of the due date of such payment, Lessee shall pay, in addition to such payment a late charge equal to the greater of 5% of the payment which is past due or Two Hundred Fifty and No/100 Dollars (\$250.00). If any payment due from Lessee shall remain overdue for more than ten (10) days, interest shall accrue daily on the past due amount from the date such amount was due until paid or judgment is entered at a rate equivalent to the lesser of eighteen (18%) percent per annum or the highest rate permitted by law. Interest on the past due amount shall be in addition to and not in lieu of the five (5%) percent late charge or any other remedy available to Railway.

4. Utility Charges, Taxes, Document Stamps

(a) Utility Charges

All charges on the Leased Premises for all utilities, including but not limited to water, electricity, gas, heat and sewers and for taxes on Lessee's improvements shall be paid by the Lessee within thirty (30) days after date of invoice.

(b) Ad Valorem Taxes

Lessee agrees to pay, within thirty (30) days after presentation unto Lessee by Railway, bills for all special assessments, ad valorem taxes and any other taxes of whatsoever kind or nature levied by the United States of America, State of Florida, any county, municipality or special taxing district organized and existing under the laws of the State of Florida, upon any of the Leased Premises on a pro-rated basis. All taxes and special assessments, payable on an annual basis, are to be pro-rated by the parties hereto for the year during which this Lease is made, as well as the year in which the same may be terminated.

(c) Document Stamps

Lessee shall pay any necessary documentary stamp taxes required to be affixed to this lease under the laws of the United States of America, the State of Florida, or both.

(d) Sales and Use Tax, Personal Property Tax

Lessee will pay all Sales and Use Taxes and all personal property taxes that may be levied or assessed against the personal property of the Lessee.

5. As Is, Maintenance

Railway MAKES NO WARRANTY, REPRESENTATION OR UNDERTAKING, EXPRESSED OR IMPLIED AS TO THE CONDITION OF THE LEASED PREMISES and Lessee, at its sole cost and expense, hereby agrees to put the Leased Premises in such condition for its proposed use and to maintain them in their entirety. The Leased Premises is leased as it currently exists in an AS IS condition and the Lessee, who has inspected the Leased Premises prior to entering into this Lease, accepts the Leased Premises as is and shall henceforth be responsible for any and all repairs and maintenance to the land and any buildings, facilities and improvements located thereon. Lessee shall perform all work required for the preparation of the Leased Premises for occupancy by Lessee, in the absence of any special provision herein contained to the contrary, and Lessee does hereby accept the Leased Premises as now being in fit and leasable condition for all purposes of Lessee.

Lessee will keep the Leased Premises free and clear of any and all trash, brush and debris of any kind, so as to prevent the trash, brush and debris from becoming dangerous, inflammable or objectionable. Railway shall have no duty to inspect or maintain any the Leased Premises during the term of this Lease.

Lessee shall have no claim of any kind or description for damages to goods, wares or merchandise on the Leased Premises from any cause whatsoever, INCLUDING FIRE, STORM, CASUALTY OR ACT OF GOD, OR NEGLIGENCE OF RAILWAY UNLESS CAUSED BY THE WILLFUL OR INTENTIONAL ACTS OF RAILWAY.

6. Lessee's Compliance With Law

(a) Zoning and Use Regulation

Lessee will release Railway from any loss, claim or damage which Lessee may sustain arising directly or indirectly by reason of either existing or future zoning or other regulations promulgated by any governmental agency which may adversely affect use by Lessee of the Leased Premises. Lessee shall assume all responsibility for procuring or complying with any ordinance, resolution, order, permit, consent or other such regulation, promulgated by any governmental agency whatsoever, for building or otherwise, required for the use of the Leased Premises or for the construction of any facilities upon the Leased Premises. Lessee shall indemnify, defend and hold harmless Railway from any loss, claim or damage suffered by Railway for Lessee's failure to properly and completely perform this responsibility.

(b) Other Regulation

Lessee shall comply with all federal, state and municipal regulations as to health, safety, zoning, police, nuisance, fire, water, liquid, solid waste and hazardous waste, highways sidewalks and other matters, and with the regulations of all persons or corporations supplying water, gas, heat, electricity or steam on the premises, and shall indemnify the Railway against all fines, penalties, expense, damages and costs for violation thereof. Lessee is solely responsible for obtaining any and all federal, state and local licenses, permits, or other authority for its use of the

premises and shall indemnify and hold harmless Railway against all fines, penalties, expenses, damage and costs for violation of or failure to comply with any federal, state or local laws or regulations.

7. Hazardous Materials

Lessee will prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in, above, to, or from the Leased Premises except that Hazardous Materials may be used in the Leased Premises as necessary for the customary maintenance of the Leased Premises provided that same are used, stored and disposed of in strict compliance with applicable laws. For purposes of this provision, the term "Hazardous Materials" will mean and refer to any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any federal, state or local laws.

If Lessee's activities at the Leased Premises or Lessee's use of the Leased Premises (a) results in a release of Hazardous Materials that is not in compliance with applicable laws or permits issued thereunder; (b) gives rise to any claim or requires a response under common law or applicable laws or permits issued thereunder; (c) causes a significant public health effect; or (d) creates a nuisance, then Lessee shall, at its sole cost and expense: (i) immediately provide verbal notice thereof to Railway as well as notice to Railway in the manner required by this Lease, which notice shall identify the Hazardous Materials involved and the emergency procedures taken or to be taken; and (ii) promptly take all action in response to such situation required by applicable laws, provided that Lessee shall first obtain Railway's approval of the non-emergency remediation plan to be undertaken.

8. Inspection and Access by Railway

Railway shall have the right, at reasonable times and upon reasonable prior notice to Lessee, to enter the Leased Premises for the purpose of examining and inspecting the condition of the Leased Premises and to evaluate Lessee's compliance with the terms and conditions of this Lease. Railway shall have the right at all times to enter the Leased Premises without prior notice to Lessee and take action in the event of any emergency affecting the Leased Premises, including but not limited to leakage of Hazardous Materials or other materials from or onto the Leased Premises, the detection of odors that appear to be coming from the Leased Premises, suspected illegal activity on or use of the Leased Premises or like activities or events. Lessee hereby releases and holds Railway harmless from any action taken by Railway to access the Leased Premises under the conditions set forth herein and/or to control or respond to any emergency affecting the Leased Premises.

9. Signs

Lessee shall not place any signs on the Leased Premises except with the prior written consent of the Railway, including consent as to location and design, which may be withheld in Railway's sole discretion. Any and all such approved signs shall be installed and shall be maintained by Lessee, at its sole cost and expense and shall be in compliance with all applicable laws. Lessee shall be responsible to Railway for the installation, use, or maintenance of said signs and any damage

caused thereby. Lessee agrees to remove said sign prior to termination of the Lease and upon such removal to repair all damage incident to such removal.

10. INDEMNIFICATION

A. To the extent allowed by law, and subject to the limitations of Florida State Statutes 768.28, to indemnify, save and hold harmless Railway, its agents, servants and employees from and against all loss, claims, costs charges, expense, suits, damage and judgments, which they may suffer, sustain or in anywise be subjected to, or for which it may be held liable on account of the death, personal injuries, damage or loss to any person or persons, including employees, agents and officers of Railway and of Lessee, directly or indirectly arising out of or on account of the leasing to or use of the property by Lessee; whether due or claimed to be due by the joint negligence of Railway, its employees, agents or servants, or otherwise. In the event that a loss or damage is due to or claimed to be due by the partial negligence of Lessee, then the Lessee's liability for indemnity to the Railway extends only to that portion of negligence, which is attributable to the Lessee. In all cases, the Lessee's liability under this clause will be governed by the limitations and to the extent provided in Section 768.28, Florida Statutes.

B. To the extent allowed by law, and subject to the limitations of Florida Statutes 768.28, to indemnify, save and hold harmless Railway, its agents, servants and employees from and against all loss, claims, costs, charges, expense, suits, damage and judgments, which they may suffer, sustain or in anywise be subjected to, or for which it may be held liable on account of any loss or damage caused in any manner to any of Lessee's buildings, structures, works and any personal property whatsoever of Lessee, situated, placed, kept or stored on, in or near the property or premises hereby leased, as well as on account of loss or damage to any personal property whatsoever, not owned by Lessee, whether owned by Railway or by others, arising directly or indirectly out of or on account of the leasing to or use by Lessee of the property hereby leased; whether due or claimed to be due by the joint negligence of Railway, its employees, agents or servants or otherwise. In the event that a loss or damage is due to or claimed to be due by the partial negligence of Lessee, then the Lessee's liability for indemnity to the Railway extends only to that portion of negligence, which is attributable to the Lessee. In all cases, the Lessee's liability under this clause will be governed by the limitations and to the extent provided in Section 768.28, Florida Statutes.

C. To the extent allowed by law, and subject to the limitations of Florida Statutes 768.28, to indemnify Railway for all loss, claims, damage, costs and expenses, including attorneys' fees and environmental cleanup costs arising from Lessee's presence upon or use of the leased premises which causes the premises to become contaminated by toxic or hazardous substances or wastes above levels which exceed the allowable levels as set forth in local, state or federal laws and regulations. Railway shall have the right, at reasonable times during the term of this Lease, upon prior notice to Lessee and accompanied by a representative of Lessee (except in cases of emergency) to enter the leased property, including any building or structure that may at any time be on the leased property, for the purpose of examining and inspecting the condition of the leased property and to ensure Lessee's compliance with the terms and conditions of this Lease.

D. Lessee acknowledges that use of Railway's property involves risk of loss or damage. Notwithstanding anything in this agreement to the contrary, Lessee hereby expressly

assumes all risks of injury or death to Lessee's employees, contractors, agents and invitees and damage to or destruction of Lessee's property resulting from or arising from Railway's operations, REGARDLESS OF THE SOLE OR JOINT NEGLIGENCE OF RAILWAY. Lessee will defend, indemnify, and save Railway harmless from and against losses from injuries or death to Lessee's employees, contractors, agents and invitees while on Railway's property or seeking ingress or egress from Railway's property leased hereunder and from damage to or destruction of Lessee's property.

11. Purpose of Lease

The premises shall be used only for the purpose of **Sidewalk Encroachment**.

12. No Interference with Railway Operations, Reservation of Rights

The Lessee's use and/or maintenance of the Leased Premises shall not in any way, or at any time, interfere with or obstruct the use of the Leased Premises or of the remaining land of the Railway by the Railway, its agents, employees, patrons or assigns. The Lessee will not discharge surface water upon any other Railway property and railroad tracks of the Railway and Lessee hereby expressly releases the Railway from liability for any surface water flowing naturally across Railway's property. Lessee further agrees not to alter the leased premises so as to cause water to drain or flow onto Railway's property nor so as to cause an undermining of the adjacent property.

Lessee shall not have or assert any claim or demand whatsoever for compensation or damages to the Leased Premises or to any improvements now or hereafter erected or property located thereon which may be caused by the operation, maintenance, repair, relocation, or removal of Railway's railroad or which may be caused by vibration resulting from the operation of said railroad and Lessee releases Railway from any liability for any such damage.

Unless specifically set forth in this Lease, no right of way, expressed or implied, over remaining property of Railway for the benefit of the Leased Premises is granted by this Lease.

It is understood between the parties hereto that Railway reserves unto itself, its successors, permittees, licensees, or other persons, the right to construct and maintain other facilities, including but not limited to pipelines and/or communication cables, over and across the Leased Premises, and further, that Lessee shall take no measures to interfere with the construction or maintenance of said facilities and shall at all times allow ingress and egress to the Leased Premises by Railway and its successors, permittees, licensees or other persons provided that such shall not unreasonably interfere with Lessee's use of the Leased Premises.

Lessee acknowledges that the Leased Premises may contain fiber optic communication systems, Railway signal and train control cables and other utilities. Prior to any digging or subgrade work on the leased premises, you must call SUNSHINE for utility locations at 1-800-432-4770 and the Railway Signal Department at 904-826-2428 for signal and train control cable locations. Proper notification is required for cable locations and field inspections to protect against damages.

13. Termination

Either party may, in its discretion, for any reason whatsoever, terminate this Lease at any time by the giving of 30 days prior written notice to the other party as hereinafter provided. Such termination shall not in any way, however, release Lessee from its obligations to surrender the Leased Premises in accordance with the requirements set forth in this Lease and to pay rent and other payments until all property of Lessee is removed from the Leased Premises and the Leased Premises is surrendered in the condition required by this Lease. If Lessee is in compliance with all of the terms, conditions and obligations set forth in this Lease and Railway terminates this Lease without cause, Lessee shall be entitled to a prorata refund of the rent paid in advance during the Lease term.

14. Condition of Premises on Termination

The Lessee shall not mutilate, damage, misuse, or alter, the Leased Premises, but shall keep the same in good condition and repair. Any and all repairs, alterations or improvements made on the Leased Premises by Railway at Lessee's request shall be at Lessee's expense unless otherwise expressly agreed in writing.

Upon the termination or expiration of the Lease, Lessee shall surrender the Leased Premises to Railway, broom clean and in the same condition as received except for ordinary wear and tear which Lessee was not otherwise obligated to remedy under any provision of this Lease. Unless Railway agrees otherwise or unless prohibited by law, Lessee shall properly remove all equipment, materials, works, trash, debris, containers, tanks and personal property ("Lessee's Property") from the Leased Premises prior to termination or expiration of this Lease. Lessee shall repair, at Lessee's expense, any damage to the Leased Premises caused by the removal of any of Lessee's Property. In no event, however, shall Lessee remove any of the following materials or equipment unless Railway directs otherwise in writing: any power wiring or power panels; lighting or lighting fixtures; millwork and cabinetry; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners, or any other heating or air conditioning equipment; fencing or security gates; plumbing fixtures, water fountains; or other similar building operating equipment and decorations, structures, foundations, concrete, asphalt or fencing. If Lessee fails to remove Lessee's Property, in addition to the payment requirements set forth in paragraph 3 hereof, at Railway option all or part of Lessee's Property will become the property of Railway and/or at Railway's option, Railway may cause removal of all or part of Lessee's Property from the Leased Premises and/or storage thereof. The reasonable cost or expense of removal and/or storage of any of Lessee's Property shall be paid by Lessee to Railway forthwith upon demand for same.

15. Lessee Improvements

Lessee will not erect or cause to be erected any building or other structure, and will not make or allow to be made any alterations in or to the Leased Premises (collectively, the "Alterations") without first obtaining the written consent of Railway, which consent may be granted or withheld in Railway's sole discretion. Railway may require Lessee to provide demolition and/or lien and completion bonds in form and amount satisfactory to Railway. All Lessee Alterations will be accomplished in a good and workmanlike manner at Lessee's sole expense, in conformity with all

applicable laws by a licensed and bonded contractor approved in advance by Railway, such approval of contractor not to be unreasonably withheld. All contractors working on Alterations shall carry workers' compensation insurance, commercial general liability insurance, automobile insurance and excess liability insurance in amounts reasonably acceptable to Railway and shall deliver a certificate of insurance evidencing such coverages to Railway prior to commencing work in the Leased Premises. Upon completion of any such work, Lessee shall provide Railway with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials. Any Alterations to the Leased Premises made by or installed by either party hereto will remain upon and be surrendered with the Leased Premises and become the property of Railway upon the expiration or earlier termination of this Lease without credit to Lessee; provided, however, Railway, at its option, may require Lessee to remove or repair any Alterations to restore the Leased Premises to the condition existing at the time Lessee took possession, with all costs of removal, repair, restoration, or alterations to be borne by Lessee. This clause will not apply to moveable equipment, furniture or moveable trade fixtures owned by Lessee, which may be removed by Lessee at the end of the Lease term if Lessee is not then in default and if such equipment and furniture are not then subject to any other rights, liens and interests of Railway. Lessee will have no authority or power, express or implied, to create or cause any construction lien or mechanics' or materialmen's lien or claim of any kind against the Leased Premises or any portion thereof or any Railway property. Lessee will promptly cause any such liens or claims to be released by payment, bonding or otherwise within thirty (30) days after request by Railway, and will indemnify Railway against losses arising out of any such claim including, without limitation, legal fees and court costs. NOTICE IS HEREBY GIVEN THAT RAILWAY WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIAL FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER LESSEE, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS WILL ATTACH TO OR AFFECT THE INTEREST OF RAILWAY IN THE PREMISES. LESSEE WILL DISCLOSE THE FOREGOING PROVISIONS TO ANY CONTRACTOR ENGAGED BY LESSEE PROVIDING LABOR, SERVICES OR MATERIAL TO THE LEASED PREMISES.

16. Assignment

Lessee will not assign this Lease, in whole or in part, or sublease the Leased Premises, in whole or in part, without the prior written consent of Railway, which consent is in Railway's sole discretion and subject to Railway's right of recapture set forth below, and in no event will Lessee be released from any obligation or liability under this Lease following any such assignment or sublease. No sub lessee of the Leased Premises or any portion thereof, may further assign or sublease its interest in the Leased Premises or any portion thereof. All legal fees and expenses incurred by Railway in connection with the review by Railway of Lessee's requested assignment or sublease pursuant to this paragraph, together with any legal fees and disbursements incurred in the preparation and/or review of any documentation, will be paid by Lessee within thirty (30) days of invoice for payment thereof, as additional rent. If the rent due and payable by any assignee or sub lessee under any permitted assignment or sublease exceeds the rent payable under this Lease for such space, Lessee will pay to Railway all such excess rent and other excess consideration within ten (10) days following receipt thereof by Lessee.

17. Fencing

Intentionally Left Blank

18. Care Around Tracks

Lessee shall adopt, monitor and enforce reasonable rules and regulations for the conduct of Lessee's employees, patrons, agents and contractors (including employees thereof) or any other persons using the Leased Premises to protect them from injury while on, about or near any track on or adjoining the Leased Premises.

19. Destruction or Damage to Leased Premises

If the Leased Premises (which shall not include Lessee's Property or Lessee's personal property) are at any time materially damaged or destroyed by fire or other Acts of God and such damage or destruction or the extent of such damage or destruction does not in any way result or arise from the acts or failure to act of Lessee, its employees, agents, invitees, visitors, customers, assignees, sub lessees, contractors or subcontractors, Railway shall have sixty (60) days from such damage or destruction to determine in its sole discretion and inform Lessee whether Railway will restore the Leased Premises to substantially the condition that existed immediately prior to the occurrence of the casualty . If Railway determines not to restore the Leased Premises, it will notify Lessee and Lessee's sole remedy shall be to terminate the Lease upon prior written notice to Railway. If Railway elects to rebuild it will give Lessee its reasonable estimation of the time it will take to restore the Leased Premises. If in Railway's reasonable estimation, the Leased Premises cannot be restored within two hundred forty (240) days of such damage or destruction, then either party may terminate this Lease by written notice to the other party. Subsequent to Railway's determination to restore the Leased Premises, and until the restoration of the Premises is complete, there shall be an abatement or reduction of the rent in the same proportion that the square footage of the Leased Premises so damaged or destroyed and under restoration bears to the total square footage of the Leased Premises. If the damage or destruction was caused by or increased in any way by the acts or failure to act of Lessee, its employees, agents, , invitees, visitors, customers, assignees, sublessees, contractors or subcontractors. Lessee shall be responsible for promptly returning the Leased Premises to their former condition and there will be no abatement of rent.

20. Default

(a) DEFAULT. The following will be events of default by Lessee under this Lease:

(1) Failure to pay when due any installment of rent or any other payment required pursuant to this Lease;

(2) Failure to deliver , maintain and restore the Security Deposit required under this Lease;

(3) Failure to obtain and maintain the insurance required under this Lease;

(4) The filing of a petition for bankruptcy or insolvency under any applicable

federal or state bankruptcy or insolvency law; an adjudication of bankruptcy or insolvency or an admission that it cannot meet its financial obligations as they become due, or the appointment of a receiver or trustee for all or substantially all of the assets of Lessee; the foregoing shall also apply to all guarantors, if any;

(5) A transfer in fraud of creditors or an assignment for the benefit of creditors, by Lessee or any Guarantor;

(6) Any act which results in a lien being filed against all or a portion of the Leased Premises;

(7) The liquidation, termination or dissolution of Lessee or any Guarantor, or, if Lessee or any Guarantor is a natural person, the death of Lessee or such Guarantor;

(8) Failure to cure any non-monetary provision of this Lease within 20 days after written notice thereof to Lessee.

(b) REMEDIES. In the event of any default hereunder by Lessee, then without prejudice to any other rights which it has pursuant to this Lease or at law or in equity, the Railway shall have the following rights and remedies, which are cumulative and not alternative:

(1) Railway may terminate this Lease by notice to Lessee and retake possession of the Premises for Railway's account. Lessee shall then quit and surrender the Premises to Railway in accordance with the requirements of this Lease. Lessee's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, or any re-entry, repossession, or disposition hereunder, including to the extent legally permissible, payment of all rent and other charges until the date this Lease would have expired had such termination not occurred and the surrender of the Leased Premises in accordance with the requirements of this Lease. If Railway so elects, rent may be accelerated and Lessee shall pay Railway damages in the amount of any and all sums that would have been due for the remainder of the Initial Term or any Renewal Term.

(2) Railway may enter the Leased Premises as agent of the Lessee to take possession of any property of the Lessee on the Leased Premises, to store such property at the expense and risk of the Lessee or to sell or otherwise dispose of such property in such manner as the Railway may see fit without notice to the Lessee. Railway shall not be liable in any way in connection with its actions pursuant to this section, to the extent that its actions are in accordance with law.

(3) Railway may relet all or any part of the Leased Premises for all or any part of the unexpired portion of the term of this Lease or for any longer period, and may accept any rent then attainable; grant any concessions of rent, and agree, at Lessee's expense, to paint or make any special repairs, alterations, and decorations for any new Lessee as it may deem advisable in its sole and absolute discretion. Railway shall be under no obligation to relet or to attempt to relet the Premises greater than that imposed by law.

(4) Railway may remedy or attempt to remedy any default of the Lessee under this Lease for the account of the Lessee and to enter upon the Premises for such purposes. No notice of the Railway's intention to perform such covenants need to be given. Railway shall not be liable to the Lessee for any loss or damage caused by acts of the Railway in remedying or attempting to remedy such default and the Lessee shall pay to the Railway all expenses incurred by the Railway in connection with remedying or attempting to remedy such default. Any expenses incurred by Railway shall accrue interest from the date of payment by Railway until repaid by Lessee at the highest rate permitted by law.

(c) COSTS.

Lessee shall pay to Railway on demand all costs incurred by Railway, including reasonable attorneys' fees and costs, (whether incurred in preparation for or at trial, on appeal, or in bankruptcy), incurred by Railway in enforcing any of the obligations of Lessee under this Lease. In addition, upon any default by Lessee, Lessee shall also be liable to Railway for the expenses to which Railway may be put in re-entering the Premises, reletting the Premises and putting the Premises into the condition necessary for such reletting (including attorneys' fees and disbursements, marshall's fees, and brokerage fees, in so doing), and any other expenses reasonably incurred by Railway.

(d) WAIVER.

No delay or omission by Railway in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default.

(e) DEFAULT BY RAILWAY.

In the event of any default by Railway of any material term of this Lease, Lessee will give Railway written notice specifying such default with particularity, and Railway shall have a period of thirty (30) days following the date of such notice in which to commence the appropriate cure of such default. If Railway fails to commence and diligently pursue the appropriate cure of such default after such notice or complete same within a reasonable period of time, Lessee may terminate this Lease upon written notice to Railway.. Notwithstanding any provision of this Lease, Railway shall not at any time have any personal liability under this Lease, and Lessee's sole remedy with respect thereto shall be termination of the Lease. Such termination shall not in any way, however, release Lessee from its obligations to surrender the Leased Premises in accordance with the requirements set forth in this Lease and to pay rent and other payments until all property of Lessee is removed from the Leased Premises and the Leased Premises is surrendered in the condition required by this Lease.

21. Hold Over

In addition to and not limiting any other rights or remedies which Railway may have on account of Lessee holding over without written consent of Railway, Lessee shall pay to Railway any and all direct and consequential damages incurred by Railway on account of such unapproved holding over including claims by lessees entitled to future possession.

22. Condemnation

If all or a portion of the Leased Premises shall be taken by public or quasi-public authority under any power of eminent domain or condemnation, this Lease, at the option of the Railway, shall forthwith terminate and the Lessee shall have no claim or interest in or to any award of damages for such taking.

23. Quiet Enjoyment

If Lessee pays the rent and all other charges and fully performs all of its obligations under this Lease, Lessee shall be entitled to peaceful and quiet enjoyment of the Leased Premises for the full Term without interruption or interference by Railway or any person claiming through Railway.

24. No Waiver or Modification

None of the provisions hereof shall be waived or modified, except by mutual agreement, in writing, and no alleged verbal or written inducement prior to execution nor subsequent verbal waiver, or modification, shall be binding under any circumstances. Further, that this lease constitutes the entire understanding of the parties and that neither the failure of the Railway to enforce each and every provision, nor any course of conduct by the Railway shall be considered as a waiver of these provisions.

25. Successors and Assigns

The provisions hereof shall be binding upon and inure to the benefit of the successor, executors, administrators and permitted assigns of the respective parties.

26. Special Notice Regarding Radon Gas

Lessee is hereby notified that Radon Gas is a naturally occurring radioactive gas that, when accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over a period of time. Levels of Radon that exceed federal and state guidelines have been found in buildings in the State of Florida. Lessee is further notified that additional information regarding Radon Gas, and the testing for Radon Gas, may be obtained from the Public Health Units of the various counties.

27. Restrictions

Lessee agrees that no plants, shrubbery, trees or other vegetation that would obstruct the view of motor vehicles or train crews using a crossing at grade, or interfere with the operation of trains, will be placed on the Leased Premises. In addition to the above restriction, no plants, shrubbery, trees or other vegetation having a height of more than two (2) feet will be placed within two hundred and fifty (250) feet of any at grade street crossing, and if such vegetation exceeds two (2) feet in height, the Railway may trim such vegetation to a two (2) foot height at Lessee's expense. Plants, shrubbery, trees or other vegetation shall be trimmed by Lessee so as to maintain this distance from the

centerline of the nearest track of twenty-five (25) feet and if such vegetation is closer than twenty-five (25) feet from the centerline of the nearest track, the Railway may trim or remove such vegetation so that no vegetation is within twenty-five (25) feet of the centerline of the nearest track at Lessee's expense. This restriction in no way limits the indemnification requirements set forth in this Lease. Also, no plants, shrubbery, trees or other vegetation of a hazardous nature that might produce injury to any person coming in contact with said plants, shrubbery, trees or other vegetation will be

placed upon the Leased Premises or any adjacent property by Lessee. The placement of any wells by Lessee on the Leased Property or any adjacent property is strictly prohibited.

28. Notices

Any notice to be given or to be served upon any party hereunder, in connection with this Lease, must be in writing and must be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter, containing such notice, properly addressed, with postage prepaid, is deposited in the U.S. Mail; or, if given otherwise than by certified or registered mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be addressed to the parties herein at the following addresses:

TO RAILWAY: Director of Industrial Development and Real Estate
Florida East Coast Railway, L.L.C.
P. O. Drawer 1048 (1 Malaga Street)
St. Augustine, FL 32085-1048

TO LESSEE: Miami Dade County
Public Works Department
111 N. W. 1st Street
Suite 1610
Miami, Florida 33128-1970

29. Governing Law

This Lease shall be governed by the laws of the State of Florida. In the event any suit, action or proceeding is brought by either party with respect to this Contract, such action, suit or proceeding shall be brought in any federal or state court located in Duval or St. Johns County, Florida.

30. Supersede

As of the beginning of the Initial Term of this Lease, this Lease supersedes that certain Lease Agreement dated September 26, 2005 by and between the parties hereto.

31. Illegality

If any provision of this Lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

32. Security Deposit

Intentionally Left Blank

33. Time is of the Essence. TIME IS OF THE ESSENCE OF THIS LEASE AND ALL PROVISIONS CONTAINED HEREIN.

34. Waiver of Trial by Jury. RAILWAY AND LESSEE HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE.

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IN WITNESS WHEREOF, the parties have hereto set their names and seals this _____ day of _____ 2006.

Signed, sealed and delivered

in the presence of:

**FLORIDA EAST COAST RAILWAY,
L.L.C.** A Limited Liability Company

Witness as to Railway

By: _____ (SEAL)
John D. McPherson, President

Witness as to Railway

Attest: _____
Assistant Secretary

Date of Execution: _____

MIAMI / DADE COUNTY,
a political subdivision of the State of Florida
acting by and through its Board of County
Commissioners

Witness as to Lessee

(Print Name) _____

By: _____ (SEAL)
County Manager

(Print Name) _____

Witness as to Lessee

(Print Name) _____

Attest: _____
County Clerk

(Print Name) _____

Date of Execution: _____

Legal Sufficiency

DADE COUNTY, FLORIDA

AVENUE

BOULEVARD

T. 53 S. ~ R. 41 E.

T. 53 S. ~ R. 42 E.

T. 54 S. ~ R. 41 E.

T. 54 S. ~ R. 42 E.

10' SIDEWALK SERVING
DADE COUNTY

← TO MAIN TRACK

CL P & O LEAD TRACK

308'

312'

AREA TO SERVE
ZAMINCO FREEDOM, INC.
(FENCE BY LESSEE)

SECOND

N. E. 6TH

STREET

BISCAYNE



N. E.

REV. NO.	DATE	BY	DESCRIPTION
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REVISIONS

FLORIDA EAST COAST RAILWAY CO.



OFFICE OF INDUSTRIAL DEVELOPMENT
AND REAL ESTATE
ST. AUGUSTINE, FLORIDA

MIAMI, FLORIDA

LEASE OF SPACE TO
DADE COUNTY

DRAWN BY RJD	SHEET NO. 345 +	SCALE 1" = 100'
CHECKED BY	DATE 4/14/88	

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